

Document No. 3410
Voted at Meeting of 12/23/76

TO THE ZONING COMMISSION
OF THE CITY OF BOSTON:

The Advisor to the Zoning Commission hereby petitions to amend the text of the Boston Zoning Code, as established under Chapter 665 of the Acts of 1956 as amended, as follows:

1. By striking out the last six paragraphs of Section 3-1 and inserting in place thereof the following section:

SECTION 3-1A. Special Purpose Overlay Districts. A subdistrict or part thereof or a contiguous group of subdistricts or parts thereof may be designated as a special purpose overlay district as follows: (a) planned development area (distinguished by the addition of the letter "D" to the designation of the subdistrict or subdistricts); (b) urban renewal area (distinguished by the addition of the letter "U" to the designation of subdistrict or subdistricts); (c) adult entertainment district (distinguished by the addition of the letter "E" to the designation of the subdistrict or subdistricts); (d) restricted parking district; or (e) flood hazard district. In an overlay district the regulations specified for the base subdistrict or subdistricts shall apply, insofar as they are not in conflict with special regulations specified for a particular overlay district.
2. By inserting into said Section 3-1A, following the above paragraph, the paragraphs, now in Section 3-1, headed Planned Development Areas, Urban Renewal Areas, Restricted Parking District and Adult Entertainment District.
3. By inserting into said Section 3-1A, following the paragraphs inserted by item 2 above, the following paragraph:

Flood Hazard Districts. The location of and regulations for flood hazard districts are set forth in Article 25 of this code.
4. By inserting, following Article 24, the following article:

ARTICLE 25
FLOOD HAZARD DISTRICTS

SECTION 25-1. Statement of Purpose. The purpose of this article is to promote the health and safety of the occupants of land against the hazards of flooding, to preserve and protect the streams and other water courses in the city and their adjoining lands, to preserve and maintain the ground water table, to protect the community against detrimental use and development, and to minimize flood losses, by provisions designed to:

1. Restrict or prohibit uses and structures which are dangerous to health, safety or property because of water or erosion hazards or which cause damaging increases in erosion, flood heights or flood velocities.
2. Consider flood plain management programs in neighboring areas.

SECTION 25-2. Warning and Disclaimer of Liability. The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on historical flood data. Larger floods may occur. This article does not imply that areas outside designated flood hazard districts or land uses permitted within such districts will be free from flooding or flood damages. This article shall not create liability on the part of the City of Boston or any officer or employee thereof for any flood damages that may result from reliance on this article or for any administrative decision lawfully made thereunder.

SECTION 25-3. Definition of Districts. The flood hazard districts are described as follows:

1. All bodies of water within the corporate limits of the City of Boston and all land within said limits with elevations at or below the following elevations, based on Mean Sea Level (M.S.L.) or Boston City Base (B.C.B.):
 - a. Coastal Areas: All land along or sloping toward Boston Harbor, Dorchester Bay or Massachusetts Bay, including the tidal estuaries of the Charles, Mystic, Chelsea and Neponset Rivers: 10.8 feet M.S.L. or 16.45 feet B.C.B.
 - b. Charles River: All land in West Roxbury along or sloping towards the Charles River: 93.6 feet M.S.L. or 99.25 feet B.C.B.; all land in Boston Proper, Roxbury and Brighton along or sloping towards the Charles River: 6.9 feet M.S.L. or 12.55 feet B.C.B.
 - c. Neponset River: All land in Dorchester and Hyde Park along or sloping to the Neponset River (i) between Walter Baker Dam and the end of channel improvements made by the Metropolitan District Commission (approximately 2,100 feet downstream from Truman Highway bridge as measured along the thread of the stream): all land within the improved channel of the river and all structures abutting said channel; (ii) between said end of

channel improvements and Neponset Valley Parkway bridge: 41.35 feet M.S.L. or 47 feet B.C.B. plus 0.108 foot for each 100 feet upstream from said end of channel improvements, as measured along the thread of the stream, and (iii) between Neponset Valley Parkway bridge and the Dedham town line: 44.35 feet M.S.L. or 50 feet B.C.B.

- d. Mother Brook: All land in Hyde Park along or sloping to Mother Brook (i) between its confluence with the Neponset River and Hyde Park Avenue bridge: 41.35 feet M.S.L. or 47 feet B.C.B.; (ii) between the bridges at Hyde Park Avenue and the Penn Central Railroad: 43.35 feet M.S.L. or 49 feet B.C.B.; (iii) between the bridges at the Penn Central Railroad and Reservation Road: 45.35 feet M.S.L. or 51 feet B.C.B.; (iv) between the bridge at Reservation Road and the Knight Street dam: 47.35 feet M.S.L. or 53 feet B.C.B.; (v) between the Knight Street dam and the River Street bridge: 50.35 feet M.S.L. or 56 feet B.C.B.; and (vi) between the bridge at River Street and the Boston-Dedham line: 52.35 feet M.S.L. or 58 feet B.C.B.
 - e. Muddy River: All land in Roxbury along or sloping to the Muddy River from Brookline Avenue to and including Leverett Pond: 10.8 feet M.S.L. or 16.45 feet B.C.B.
 - f. Back Bay Fens: All land in Roxbury along or sloping to the Back Bay Fens: 6.9 feet M.S.L. or 12.55 feet B.C.B.
2. All lands lying within a distance of thirty feet from the normal bank of any pond, reservoir or open stream, unless a greater or lesser distance is required under Item 1 above.
 3. Marshes and swamps as defined by the Wetlands Protection Act, Massachusetts General Laws C. 131 s. 40, as amended.

SECTION 25-4. Mapping. The elevations and other descriptions in Section 25-3 are to be used in determining the boundaries of a flood hazard district in relation to a given parcel of land. A series of maps entitled "Flood Hazard Districts - City of Boston" shows the general location of the districts. Said maps can be examined in the offices of the Building Department or the Zoning Commission.

SECTION 25-5. Regulations.

1. Allowed Uses. The following uses are allowed in flood hazard districts provided that they do not require structures, fill, or storage of materials or equipment, and provided that such use will not adversely affect the capacity of the channels of streams, drainage ditches or other drainage facilities: (a) conservation of soil, plants and wild life; (b) public and private outdoor recreation, including, but not limited to, play areas, golf courses, beaches, boating and fishing; or (c) agriculture, horticulture, forestry or aquaculture.

2. Pre-existing Structures; Structures Subsequently Granted as Exceptions. In the case of a building or structure that lawfully exists or for which a building permit has been lawfully issued prior to the effective date of this article, or which is subsequently constructed under an exception granted by the Board of Appeal, no Board of Appeal permission is required for the use of such building or structure for any use that is allowed in the underlying subdistrict or subdistricts. If the proposed use of such building or structure is conditional in the underlying subdistrict, the Board of Appeal may grant a conditional use permit under the provisions of Article 6. In all other respects, a land use or structure made nonconforming by this article is subject to the provisions of Article 9, Nonconforming Uses.
3. Developed Coastal Flood Hazard Districts. The following portions of the coastal flood hazard district are designated as developed coastal flood hazard districts:

East Boston: from the Revere city line on the Chelsea River to and including Jeffries Point.

Charlestown: from Somerville city line to Warren Avenue dam.

Boston Proper and South Boston: from Warren Avenue dam to the northerly boundary of Castle Island Park.

In said developed coastal flood hazard districts, a new structure or an addition to an existing structure is allowed provided that such structure conforms to the regulations of the base subdistrict, and providing further that the lowest floor, including the basement, if any, is elevated above the regulatory flood elevation, or, in the case of a non-residential structure, any portion of said structure below the regulatory flood elevation is flood proofed in compliance with the requirements of the Massachusetts State Building Code. Land, wharves or piers with surface elevations eight feet or more Mean Sea Level or 13.65 feet or more Boston City Base, may be used for off-street parking or loading provided that vehicles involved can be readily removed in time of flood.

4. Storage of Materials and Equipment. Storage or processing of materials that are flammable, explosive or injurious to water quality or to human, animal or plant life is forbidden in any flood hazard district. Storage of other material or equipment may be allowed as an exception provided that such material or equipment is firmly anchored to prevent flotation or is readily removable from the area.
5. Grading, Filling, Excavating, Dredging, Driving of Piles. In a flood hazard district, no building permit shall be issued for any work that involves grading, filling, excavating, dredging, driving of piles or other activity that is subject to Chapter 131, Section 40, as amended, of the Massachusetts General Laws unless such work complies with a final order of conditions issued by the Boston Conservation Commission.

SECTION 25-6. Exceptions

1. Authorization. Subject to the provisions of Sections 6-2, 6-3, and 6-4, the Board of Appeal may, in a specific case and after public notice and hearing, grant an exception to the provisions of Section 25-5, provided that the Board of Appeal finds that the proposed use or structure (a) will not derogate from the purposes of this article, (b) will comply with the provisions of the underlying subdistrict or subdistricts, and (c) will not overload any public water, drainage or sewer system to such an extent that the proposed use or any developed use in the area or in any other area will be unduly subjected to hazards affecting health, safety or the general welfare.

Such exception shall lapse and become null and void unless used within two years after the record of said Board's proceedings pertaining thereto is filed with the Building Commissioner pursuant to Section 8 of said Chapter 665.

2. Site Plan. A site plan at a scale no smaller than 1" - 100', prepared by a registered land surveyor or registered professional civil engineer, shall be submitted in quadruplicate to the Building Commissioner by the applicant. Such plan shall show at least the following:
 - a. The location, boundaries and dimensions of the lot or lots.
 - b. Contour lines described in Section 25-3, if any, and two-foot contour lines of the existing and proposed configuration of land.
 - c. Areas supporting vegetation commonly found in marshes and swamps.
 - d. Location of existing and proposed structures, water courses, utility easements, means of access, and drainage and sewerage facilities.
 - e. The area and location of existing or proposed leaching fields, if any.
3. Factors to be Considered. In considering a site plan, the Board of Appeal shall, consistent with reasonable use of the site, find the following requirements to be met:
 - a. Location and construction of utilities so as to minimize or eliminate flood damage.
 - b. Adequate methods of disposal of sewage, refuse and other wastes from the uses permitted on the site.
 - c. Adequate drainage so as to minimize flood damage.
 - d. That new or replacement water supply systems and/or sanitary sewerage systems are designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and that onsite waste disposal systems will be located so as to avoid impairment of them or contamination from them during flood.

- e. That the floor of the lowest floor, including the basement if any, is elevated at or above the regulatory flood elevation, or, in the case of a non-residential structure, that any portion of said structure below the regulatory flood elevation is flood proofed in compliance with the requirements of the Massachusetts State Building Code. In the case of land described in Item 1 of Section 25-3, the regulatory flood elevation shall be the elevation listed for such land; in the case of land described in Item 2 or 3 of Section 25-3, the regulatory flood elevation shall be the level of probable inundation during a flood of the 100-year magnitude, as established for a given lot by the Board of Appeal on the basis of the best information available to it.

SECTION 25-7. Application. The provisions of this article are not intended to repeal, amend, abrogate, annul, or interfere with any lawfully adopted statutes, ordinances, covenants, regulations, or rules. However, where this article imposes greater restrictions, the provisions of this article shall govern.

MEMORANDUM

December 23, 1976

3410

TO: BOSTON REDEVELOPMENT AUTHORITY

FROM: ROBERT T. KENNEY, DIRECTOR

SUBJECT: AUTHORIZATION TO PETITION THE ZONING COMMISSION FOR A REVISED TEXT AMENDMENT TO ESTABLISH AND REGULATE FLOOD HAZARD DISTRICTS AND TO WITHDRAW THE PREVIOUS MAP AND TEXT AMENDMENT APPLICATIONS

On October 9, 1975, the Boston Redevelopment Authority authorized the Advisor to the Zoning Commission to petition for a text amendment to establish and regulate flood hazard districts in the City of Boston and for a map amendment to adopt a series of maps showing the general location of the flood hazard overlay districts. The Zoning Commission held a public hearing on those petitions on October 24, 1975. Partly as a result of questions and objections raised at the hearing and partly because of newly discovered reference material, the text amendment has been revised to an extent requiring a new petition and a new hearing. Because of the difficulties of accurately mapping the elevations described in the text, it is recommended that the series of maps formerly to be officially adopted by the Zoning Commission not be so adopted but be used administratively by the Building Department as an indication of areas where detailed topographic information will be required.

I attach the revised text amendment, along with a memo detailing the changes. The most important change is the creation of a "Developed Coastal Flood Hazard District," which will encompass the heavily developed harbor frontages in East Boston, Charlestown, Boston Proper, and South Boston. In these districts, no Board of Appeal approval will be required for new structures that otherwise meet zoning regulations provided that they either are elevated above the regulatory flood elevation or, in the case of nonresidential structures, are adequately floodproofed below the regulatory flood elevation. In these districts parking and loading will be allowed below the regulatory flood elevation but no lower than the mean annual high tide elevation.

There are also some adjustments in regulatory flood elevations for coastal areas, the Muddy River, the Back Bay Fens, and the Charles River in West Roxbury; some simplifications of review procedures; a disclaimer of City liability should a flood exceed the regulatory flood elevation; and a prohibition of the storage or processing of flammable or injurious substances in the flood hazard district.

I remind the Authority that in order to retain its eligibility for participation in the federal Flood Insurance Program, the City of Boston must adopt land use regulations for flood-prone areas.

Letters are being sent to the East Boston Chamber of Commerce and its members who wrote in objection to the original amendment, detailing the easing of the regulations in developed coastal areas and the streamlining of the appeal procedures.

I recommend that the Advisor to the Zoning Commission be authorized to petition the Zoning Commission for this revised text amendment and to withdraw the earlier text and map amendment applications. A suggested vote follows.

VOTED: That the Boston Redevelopment Authority hereby authorizes the Advisor to the Zoning Commission to petition the Zoning Commission for a revised text amendment concerning the establishment and regulation of flood hazard districts (Text Amendment Application No. 56) and to withdraw previously submitted text and map amendment applications related to the same subject.

INTER-OFFICE COMMUNICATION

TO Distribution List
FROM Mace Wenniger, Lucile Sims
DATE February 19, 1976; Revised December 10, 1976
SUBJECT New Version of Flood Hazard District Amendment

Attached is a revision of the flood hazard district amendment that was heard by the Zoning Commission on October 24, 1975. The changes are great enough that another hearing must be held.

Section 25-2, Warning and Disclaimer of Liability, is new and self-explanatory.

Section 25-3, Definition of Districts.

Item a, Coastal: The regulatory flood elevation is reduced from 11 feet Mean Sea Level or 16.65 Boston City Base to 10.8 M.S.L. or 16.45 B.C.B. This is the Army Corps of Engineers estimate of the 100 year flood, which was rounded up to 11 feet M.S.L. in the original amendment.

Item b, Charles River: The regulatory flood elevation for the West Roxbury reach is reduced from 95 feet M.S.L. or 100.65 feet B.C.B. to 93.6 feet M.S.L. or 99.25 feet Boston City Base. This is the height reached in the flood of record, August, 1955.

Item c, Muddy River: The regulatory flood elevation is reduced from 12.35 feet M.S.L. or 18 feet B.C.B. to 10.8 feet M.S.L. or 16.45 feet B.C.B. as a result of a recent calculation of the hundred year flood made by the Army Corps of Engineers in connection with a preliminary rate insurance study for the Town of Brookline.

Item f, Back Bay Fens: The regulatory flood elevation has been reduced from 9.35 feet M.S.L. or 14 feet B.C.B. to 6.9 feet M.S.L. or 12.55 feet B.C.B. The new figure is the flood of record (August, 1955). The Army Corps of Engineers advised us that, in its opinion, the flood level in the Fens will be controlled by the level in the Charles River Basin with insufficient inflow to the Fens to create a head.

Section 25-4, Mapping: This section is rewritten to emphasize that the regulatory flood elevations take precedence over the maps. The former requirement that an owner of land furnish topographic or vegetation information to determine whether or not his land is in a flood hazard district is not stated explicitly as before. It is implicit in this section, and explicit in the site plan requirements in Section 25-6.

Article 25-5, Regulations, has been expanded. Items 1 and 2 contain the same basic principles as the earlier Section 25-4 but are more detailed.

Item 3, Developed Coastal Flood Hazard District: is a new concept. It grew out of the concern expressed by industrial interests on the East Boston waterfront that the regulations, which allowed only open space uses as a matter of right, were unduly restrictive in industrial waterfront areas. The district will allow new structures or extensions of existing ones if the lowest floor is elevated above the regulatory flood height or, in the case of non-residential structures only, is flood proofed to the specifications of the State Building Code. If, in addition, the use and structure comply with the requirements of the underlying district, no Board of Appeal permission would be necessary. Off-street parking and loading would be allowed at elevations below the regulatory flood height, down to the elevation of the mean annual flood, or 8 feet M.S.L. or 13.65 feet B.C.B.

Item 4, Storage of Materials and Equipment: is a new concept and is recommended by the U.S. Water Resources Committee.

Item 5, Grading, Filling, etc.: In the original petition, the Board of Appeal would have had to grant permission for these activities, in addition to approval by the Boston Conservation Commission under the Wetlands Protection Act. The present wording requires prior approval by the Boston Conservation Commission, with no requirement for additional Board of Appeal approval.

Section 25-6, Exceptions

Item 1, Authorization: has been revised to include some basic findings that the Board of Appeal must make before granting an exception in a flood hazard district.

Item 2, Site Plan: only four copies of an appeal are required to be filed. Formerly, extra copies of the appeal were to be forwarded to the Boston Conservation Commission, the Department of Public Works and the Department of Health and Hospitals for review and report to the Board of Appeal. Prior approval by the Conservation Commission, described above, eliminates the necessity for referral to that body. Input from the Health and Hospitals Department is required only in cases involving on-site waste disposal. The BRA will, during its standard review, refer such cases to the department for review. Input from several divisions of the Public Works Department would be required in most cases; these inputs will be sought by the BRA through referral and consultation procedures, eliminating the necessity of an earlier paragraph entitled "Review by City Agencies". (This paragraph drew considerable criticism at the public hearing.)

The wording of the former "Conditions to be Required for Exceptions" has been softened to "Factors to be Considered" and includes the phrase, "consistent with reasonable use of the land". The wording of the criteria has been simplified but covers the same items as the earlier version, except that (d) is new. It is required by HUD regulations.

The paragraph entitled, "Other Conditions Necessary as Protection" has been dropped. It repeats the wording of Section 6-4 which is one of the sections in the base code under which exceptions in the flood hazard district are granted.